

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

ORDER ADOPTING REPORT AND RECOMMENDATION IN SUBSTANTIAL PART

Before the Court is the Report and Recommendation of the Magistrate Judge filed on January 28, 2010. On April 21, 2009, Plaintiff Stephen Faulkner filed a complaint against Defendants Transportation Made Simple, Inc. and Transportation Made Simple of Tennessee, LLC (collectively “TMS”), alleging violations of the Fair Labor Standards Act and seeking damages for unpaid overtime compensation, liquidated damages, and attorneys’ fees and costs. Based on TMS’s failure to respond after being served with the complaint, on October 22, 2009, Faulkner filed a motion pursuant to Fed. R. Civ. P. 55(a) for entry of default by the Clerk of Court. On November 13, 2009, the Clerk entered default against TMS. On December 16, 2009, the District Judge entered an order of reference for the undersigned Magistrate Judge to conduct a hearing on damages and to submit a report and recommendation on the entry of final judgment. At the hearing, counsel for Plaintiff indicated that she did not wish to go forward with the damages hearing, and instead wished to amend the complaint to add an additional party.

The Magistrate Judge recommended, based on Faulkner's representation that he would be filing an amended complaint, that the issue of damages be deemed moot. Furthermore, that once Faulkner files his amended complaint, the Court set aside the Clerk's entry of default on the original complaint.

A review of the docket sheet reveals that no objection to the Report and Recommendation has been filed, nor has an amended complaint been filed.

The Court hereby adopts the Report and Recommendation as its findings and enters relief as follows:

- 1) The Clerk's entry of default is hereby set aside;
- 2) The issue of damages as to the original complaint is adjudged moot; and
- 3) Plaintiff is ordered to file an amended complaint within fifteen (15) days of the entry of this order.

IT IS SO ORDERED, this 22nd day of February, 2010.

s/Bernice B. Donald
BERNICE BOUIE DONALD
UNITED STATES DISTRICT JUDGE